Exhibit "A"

Opinion of United States District Court for the Greenville Division of the Northern District of Mississippi

The Court:

Gentlemen, I am going to dispose of this case in what may appear to be a rather awkward way, for the sole purpose of giving the Court of Appeals my entire views with respect to this, so that in the event of an appeal, and they disagree with my disposition, they would not have to send it back for further proceedings here, but could dispose of it there.

There is no question but that a substantial part of the eggs handled by the defendant move in commerce. After the first investigation in October of 1959, there was no contention on the part of the Secretary of Labor that the defendant's operations required compliance with the Fair Labor Standards Act except with respect to the egg-breaking part of the operation, which was promptly discontinued.

At that time, with respect to the rest of the operation, plaintiff's investigator and the defendants both believed that the defendants' remaining operation was exempt under the provisions of Section 13(a)(10) of the Act.

When the investigation of July 1960 showed that the flocks from which the eggs came,—a sufficient number of them,—were located more that fifty miles away from the plant at Itta Bena, so that by that method of calculation, more than five percent of the eggs handled by the defendants were, in fact, produced more than fifty airline miles away from the plant, and when that was developed, the Secretary of Labor then, for the first time, contended that the defendant was required to comply with the Fair Labor Standards Act.

Promptly after this contention was made, the defendant attempted to comply fully with the provisions of the Act and did so beginning on the 24th of August, 1960, except for two clerical employees; and full compliance for all employees was attained on September 28, 1960. This is so, although the defendant, in good faith, believed then and still continues to believe that it is not legally required to comply with the Act.

I find as a fact that there was at no time during either of the investigations any effort on the part of defendant to conceal, and there was in fact no concealment.

I find as a fact that it is probable that the defendant will continue in the future to comply fully with the provisions of the Fair Labor Standards Act.

With these fact findings, even if I concluded that coverage applied and no exemption was available to the defendant, I necessarily would have to find that this situation did not require the issuance of an injunction and, in fact, would not permit the issuance of an injunction.

But I find as a fact that all of the eggs that are handled by the defendant either come from flocks located on farms within fifty miles of Itta Bena, or come to the defendant from farm assemblers or other establishments through which poultry or eggs customarily move, which are, in fact, themselves located within fifty airline miles of the plant of the defendant, and in open country or a rural community.

With that finding, I find as a conclusion of law that the Act, by its provisions and regulations promulgated thereunder, give to these defendants in their present type of operation, an exemption under Section 13(a)(10) of the Act.

As a conclusion of law, the plaintiff is not entitled to the relief prayed for and prayer for injunction will be and is denied.

You may either hand me the order next week when I will be back here the latter part of the week or mail it to me in Tupelo for entry in accordance with these findings.

Let me say again, gentlemen, I went at it through the back door in order that the Court of Appeals might have the benefit of my views on all issues of fact and conclusion of law that might, by either view, be applicable to the situation.

Anything else to come up this afternoon? If not, Court is adjourned.

Exhibit B

IN THE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19193

ARTHUR J. GOLDBERG, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR, APPELLANT,

versus

SOUTHERN FARMS, INC., APPELLEE.

Appeal from the United States District Court for the Northern District of Mississippi

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(March 30, 1962)

Before RIVES, BROWN and WISDOM, Circuit Judges.

RIVES, Circuit Judge: The Secretary of Labor sued to enjoin Southern Farms, Inc., from violating the provisions of the Fair Labor Standards Act as amended.[1] Southern Farms, Inc., is engaged in purchasing, candling and selling eggs at Itta Bena, Mississippi. It regularly ships eggs in interstate commerce, but contends that the wage benefits

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[1] Act of June 25, 1938, c. 676, 52 Stat. 1060, as amended by the Fair Labor Standards Amendments of 1949, c. 736, 63 Stat. 910, 29 U.S.C. 201, et seq.

of the Act do not apply to its employees because they are engaged in handling agricultural commodities for market, and are so "employed within the area of production (as defined by the Secretary)."[2]

The district court found that the evidence sustained that contention, and hence that Southern Farms, Inc., had not been in violation of the Act. The district court expressed the further opinion "that, even should the business conducted by said defendant come within the provisions of the Act, an injunction should not issue."

The primary question is whether Southern Farms' employees are "employed in the area of production" as that term has been defined by the Secretary.[3] To be so em-

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[2] The pertinent provision of the Fair Labor Standards Act, Act of June 25, 1938, c. 676, 52 Stat. 1060, as amended, 29 U.S.C. 201, et seq., is as follows:

"Sec. 13. (a) The provisions of sections 6 and 7 shall not apply with respect to . . . (10) any individual employed within the area of production (as defined by the Secretary), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy product; . . ."

[3] The pertinent part of 29 Fed. Code Reg. 536.2 reads as follows:

"Sec. 536.2 *'Area of production' as used in section 13(a) (10) of the Fair Labor Standards Act.*

"(a) An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10) of the Fair Labor Standards Act in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products:

"(1) If the establishment where he is employed is located in the open country or in a rural community and 95 percent of the commodities on which such operations are performed by the establishment come from normal rural sources of supply

ployed an employee who handles eggs must be employed in an establishment in which 95% of the eggs come either from farms within a 50-mile area, or from "farm assemblers or other establishments through which the commodity customarily moves."

It was stipulated that more than 5% of the eggs handled at Southern Farms' plant in Itta Bena come from flocks of hens on farms more than 50 airmiles from Itta Bena. The parties agree on their statement of the issue. "The issue therefore is whether the eggs from out-of-area farms, in excess of the 5% tolerance, come to the defendant through 'farm assemblers or other establishments through which the commodity customarily moves', which are themselves located within the 50-mile limit."

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located not more than the following air-line distances from the establishment:

"(i) With respect to the ginning of cotton—10 miles;

"(ii) With respect to operations on fresh fruits and vegetables—15 miles;

"(iii) With respect to the storing of cotton and any operations on commodities not otherwise specified in this subsection—20 miles;

"(iv) With respect to the compressing and compress-warehousing of cotton, and operations on tobacco, grain, soybeans, poultry or eggs—50 miles.

"(b) For the purposes of this section:

"(1) 'Open country or rural community' shall not include any city, town or urban place of 2,500 or greater population or any area within:

"(i) One air line mile of any city, town, or urban place with a population of 2,500 up to but not including 50,000.

"(2) The commodities shall be considered to come from 'normal rural sources of supply' within the specified distances from the establishment if they are received (i) from farms within such specified distances, or (ii) from farm assemblers or other establishments through which the commodity customarily moves, which are within such specified distances and located in the open country or in a rural community, or (iii) from farm assemblers or other establishments not located in the open country or in a rural community provided it can be demonstrated that the commodities were produced on farms within such specified distances."

The out-of-area eggs are supplied to Southern Farms by Greenwood Egg Company and two other suppliers. Between September 1959 and July 1960 the eggs supplied by Greenwood alone accounted for more than 20% of the eggs handled by Southern Farms. Greenwood collects in its truck eggs from a number of its different farms, buys eggs produced on other farms, and hauls them to Itta Bena. Greenwood is a partnership, and its two partners are also stockholders in Southern Farms. One of the Greenwood partners testified that, "the only assembly facilities Greenwood Egg Company has as such would be in conjunction with Southern Farms facilities."

Since Greenwood's truck collects eggs beyond the 50-mile area, the truck cannot qualify as a "farm assembler" or an "establishment through which" the eggs move within the specified distance. The Greenwood partner who testified readily admitted that Greenwood does not maintain a plant where it assembles eggs and that its truck driver brings the eggs not to Greenwood Egg Company but to Southern Farms at Itta Bena. That being true, it is not material that he further testified, "We have full-time employees there at the office (of Southern Farms), paid by Greenwood Egg Company." Very clearly, we think, the evidence failed to establish that Greenwood was a "farm assembler" or "other establishment" through which the eggs customarily move within the specified distance. We hold that the district court erred in concluding that Southern Farms was exempt from the wage provisions of the Act under Section 13(a)(10).

The Secretary questions the findings of fact from which the district court concluded that, in any event, an injunction should not issue.[4] Those findings are not clearly

[4] "When the investigation of July 1960 showed that the flocks from which the eggs came, — a sufficient number of them — were located more than fifty miles away from the plant at Itta Bena, so that by that method of calculation, more than five percent

erroneous. Rule 52(a), Federal Rules of Civil Procedure. Under such findings, while the judgment must be reversed, the district court, in its discretion, may decline to issue an injunction.[5] The judgment is therefore reversed and the cause remanded.

REVERSED AND REMANDED.

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of the eggs handled by the defendants were, in fact, produced more than fifty airline miles away from the plant, and when that was developed, the Secretary of Labor then, for the first time, contended that the defendant was required to comply with the Fair Labor Standards Act.

"Promptly after this contention was made, the defendant attempted to comply fully with the provisions of the Act and did so beginning on the 24th of August, 1960, except for two clerical employees; and full compliance for all employees was attained on September 28, 1960. This is so, although the defendant, in good faith, believed then and still continues to believe that it is not legally required to comply with the Act.

"I find as a fact that there was at no time during either of the investigations any effort on the part of defendant to conceal, and there was in fact no concealment.

"I find as a fact that it is probable that the defendant will continue in the future to comply fully with the provisions of the Fair Labor Standards Act.

"With these fact findings, even if I concluded that coverage applied and no exemption was available to the defendant, I necessarily would have to find that this situation and, in fact, would not permit the issuance of an injunction."

[5] Compare Mitchell v. Pidcock, m/s, 5 Cir., No. 18687, decided Feb. 5, 1962; Mitchell v. Ballenger Paving Co., m/s, 5 Cir., No. 18714, decided Feb. 6, 1962.

Exhibit C

JUDGMENT.

Extract from the Minutes of March 30, 1962

No. 19193

ARTHUR J. GOLDBERG, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR

versus

SOUTHERN FARMS, INC.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Mississippi, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court in accordance with the opinion of this Court.

* * * *

Exhibit D

FILED 27th day of April 1962

/s/ Edward W. Wadsworth
Clerk of the United States Court of Appeals

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19193

ARTHUR J. GOLDBERG, Secretary of Labor,
United States Department of Labor, APPELLANT,

versus

SOUTHERN FARMS, INC., APPELLEE.

Appeal from the United States District Court for the
Northern District of Mississippi.

(April 27, 1962)

ON PETITION FOR REHEARING OF APPELLEE
Before RIVES, BROWN and WISDOM, Circuit Judges.

PER CURIAM:

The petition for rehearing of appellee in the above-styled and numbered cause is hereby

DENIED.

Exhibit "E"

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI, GREENVILLE DIVISION

Civil Action No. G-C-48-60.

ARTHUR J. GOLDBERG, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF,

v.

SOUTHERN FARMS, INC., DEFENDANT.

This cause having come on to be heard on this the 17th day of February, 1961, and the Court having heard and considered all of the testimony and evidence adduced by the parties and being fully advised in the premises is of the opinion that the business conducted by the defendant, Southern Farms, Inc., is within the "Area of Production" exemption of the Fair Labor Standards Act. Further, the Court is of the opinion that even should the business conducted by said defendant come within the provisions of the Act, an injunction should not issue.

It is, therefore,

ORDERED:

That the plaintiff is denied any relief and that the complaint herein shall be and the same is hereby dismissed with prejudice.

This the 17th day of February, 1961.

CLAUDE F. CLAYTON.
(Claude F. Clayton),
District Judge.